IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8770 of 1992

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GIRJABUXSINGH S RAJPUT

Versus

DENA BANK

Appearance:

MR TR MISHRA for Petitioner

MR KM PATEL for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 15/12/2000

ORAL JUDGEMENT

Heard the learned advocates.

The petitioner workman challenges the judgment and order dated 21st February, 1992, passed by the

learned Central Industrial Tribunal, Ahmedabad, in Reference (ITC) No. 10/84.

It appears that in the year 1978 or thereabout, the petitioner was appointed as a Sepoy in the respondent Bank as Badali worker. The petitioner served as Badali Sepoy in Asarva Branch of the Bank for some 29 days in the month of May, 1978, 3 days in the month of June, 1978, and 18 days in the months of August and September 1978. Before that, the petitioner was appointed as a Badali Sepoy for 34 days in Saraspur Branch of the Bank. In the year 1979 also, he served for some days as Badali Sepoy in Asarva Branch and Gomtipur Branch of the Bank. Each of the said appointments were made by the concerned Branch Manager. On 7th March, 1981, the Regional Manager of the Bank appointed the petitioner as a Badali Sepoy for 40 days in the basic pay of Rs. 245/- PM and the Dearness Allowance at the prevailing rate. Once again on 18th July, 1981, he was appointed for 30 days as a Badali Sepoy in Asarva Branch of the bank on similar terms i.e. basic pay of Rs.245/- PM + Dearness Allowance at the prevalent rate. Since then the petitioner does not appear to have been engaged by the Bank.

It is the claim of the petitioner that he was selected for permanent appointment as a Sepoy and was appointed as a Watchman on 28th September, 1981. But without following due procedure of law, his service was terminated on 1st July, 1982. Feeling aggrieved, the petitioner raised an industrial dispute which was referred to the Tribunal and was registered as Reference (ITC) No. 10/84. The learned Tribunal held that on the date of termination of his service, the petitioner had completed 240 days' of service and before the termination of his service, he was entitled to retrenchment compensation under section 25 (f) of the Industrial Disputes Act, 1947. The learned Tribunal also observed that on the date of his selection, the petitioner had already crossed the upper age limit and was not entitled to appointment at all. Considering this fact, the learned Tribunal was of the opinion that though the termination of service of the petitioner was not in accordance with law, he had no right to employment and consequently, had no right to reinstatement in service. The learned Tribunal, therefore, directed that the petitioner be given retrenchment compensation till the date of the Award, however, refused to grant reinstatement in service. Feeling aggrieved, the petitioner has preferred the present petition.

All the orders of appointment of the petitioner

produced on record show that the petitioner was appointed as a Badali Sepoy in different Branches of the Bank for various period. Neither of the said orders is for permanent appointment. Mr. Mishra has, at the time of the hearing, produced a copy of the select list and has argued that the petitioner was selected for permanent appointment and was also given permanent appointment. The said copy is taken on record as Annexure-H to the petition. On perusal of the select list, it is evident that even at the time of drawing the select list, the petitioner was found to be over-aged, since that is the remark made against his name. No other details have been entered against his name. It is, therefore, not possible to believe that the petitioner was selected for permanent appointment and was given permanent appointment as alleged. No appointment order of permanent appointment of the petitioner pursuant to the aforesaid select list has been brought on the records of the matter. In my view, therefore, the learned Tribunal was right in holding that the petitioner was not eligible for permanent appointment and had no right to reinstatement in service. Mr. Mishra, however, has vehemently argued that since the termination of the service of the petitioner was found to be illegal, as a necessary consequence, the learned Tribunal ought to have ordered reinstatement of the petitioner in service. He has therefor relied upon the judgments in the matters of THE CHIEF MUNICIPAL OFFICER, GOVINDGAR, REWA VS. PRESIDING OFFICER, LABOUR COURT, REWEA & ORS. (1998 (3) LLJ Supple.655) , MITHILESH KUMAR SINGH VS STATE OF BIHAR & ORS (1995 {1} LLJ) , 973, STATE BANK OF INDIA VS N. SUNDARAMONEY (1976 LLJ, 478), and MUNICIPAL CORPORATION OF DELHI (MCD) PREMCHAND GUPTA & ANR (2000 SCC (L&S) 404). As against that, Mr. Patel has submitted that the learned Tribunal has erred in holding that the petitioner had completed 240 days' service before the termination of his service and this court, while examining the Award of the Tribunal has jurisdiction to decide whether the petitioner had completed 240 days' service during the 12 calendar months preceding the date of termination of his service. In support of his arguments, he has relied upon the judgments of the Supreme Court in the matters of MANAGEMENT OF THE NORTHERN RAILWAY CO-OP. CREDIT SOCIETY LTD. VS INDUSTRIAL TRIBUNAL (AIR 1967, SC 1182) and of RATAN SINGH VS UNION OF INDIA & ANR ({1997} II SCC 396).

Considering the passage of time, I am of the view that the question whether the petitioner had completed 240 days' service during the 12 months preceding the date of the termination of his service or the question whether he was given permanent appointment as a Watchman need not

be gone into. The petitioner last served in the month of July,. 1982 i.e. nearly 20 years have passed since the petitioner had last served. Even at that time, he was considered to be over-aged. After such a long passage of time, it shall not be in the interest of the administration or the public to reinstate the petitioner in public service (i.e. service of the Bank). However, the ends of the justice shall be met if the petitioner is compensated in lieu of reinstatement in service/ for loss of employment. Keeping in view the fact that the petitioner had served as Badali Sepoy intermittently during the years 1978 to 1981, I order a sum of Rs.20,000/- be paid to the petitioner by way of compensation for loss of employment. The aforesaid amount shall be paid to the petitioner within a period of two weeks from today. The Bank shall also remit the sum of retrenchment compensation and the cost ordered to be paid by the learned Tribunal retained with itself as Fixed Deposit under the interim order dated 23rd February, 1993 of this court (Coram : A.P.Ravani & J.M.Panchal JJ) along with the interest accrued thereon.

Petition is allowed to the aforesaid extent.
Rule is made absolute accordingly.

(MS R.M.DOSHIT J)

JOSHI